

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LUIGI SELCA

Plaintiff,

v.

DOUGLAS ELLIMAN PROPERTY MANAGEMENT,  
SOUNDVIEW MANAGEMENT LLC, SG2  
MANAGEMENT, LLC, AAF SOUNDVIEW  
MANAGEMENT, JOHN COLEMAN, WARREN HARR

Defendants.  
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08 CV 4521 (LAK)

**Electronically Filed**

**ANSWER TO COMPLAINT**

Defendant, DOUGLAS ELLIMAN PROPERTY MANAGEMENT, by its attorneys,  
HOEY, KING, TOKER & EPSTEIN, answers the Complaint of the Plaintiff by stating as  
follows:

1. Defendant denies the allegations of paragraph 1 and respectfully refer all questions of law to this Honorable Court.
2. Defendant denies the allegations of paragraph 2 and respectfully refer all questions of law to this Honorable Court.
3. Defendant denies the allegations of paragraph 3 and respectfully refer all questions of law to this Honorable Court.
4. Defendant denies the allegations of paragraph 4 and respectfully refer all questions of law to this Honorable Court.
5. Defendant denies the allegations of paragraph 5 and respectfully refer all questions of law to this Honorable Court.

6. Defendant denies the allegations of paragraph 6 and respectfully refer all questions of law to this Honorable Court.

7. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Defendant denies the allegations of paragraph 8.

9. Defendant denies the allegations of paragraph 9.

10. Defendant denies the allegations of paragraph 10 and respectfully refer all questions of law to this Honorable Court.

11. Defendant denies the allegations of paragraph 11.

12. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Defendant denies the allegations of paragraph 13 and respectfully refer all questions of law to this Honorable Court.

14. Admits the allegations of paragraph 14.

15. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Defendant denies the allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

20. Defendant denies the allegations of paragraph 20 and respectfully refers all questions of law to this Honorable Court.

21. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.

23. Defendant denies the allegations of paragraph 23.

24. Defendant denies the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

26. Defendant denies the allegations of paragraph 26.

27. Defendant denies the allegations of paragraph 27.

28. Defendant denies the allegations of paragraph 28.

29. Respond to paragraphs 29 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

30. Defendant denies the allegations of paragraph 30.

31. Defendant denies the allegations of paragraph 31.

32. Defendant denies the allegations of paragraph 32.

33. Respond to paragraph 33 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

34. Defendant denies the allegations of paragraph 34.

35. Defendant denies the allegations of paragraph 35.

36. Defendant denies the allegations of paragraph 36.

37. Defendant denies the allegations of paragraph 37.

38. Respond to paragraph 38 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

39. Defendant denies the allegations of paragraph 39.

40. Defendant denies the allegations of paragraph 40.

41. Defendant denies the allegations of paragraph 41.

42. Defendant denies the allegations of paragraph 42.

43. Defendant denies the allegations of paragraph 43.

44. Respond to paragraph 44 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

45. Defendant denies the allegations of paragraph 45.

46. Defendant denies the allegations of paragraph 46.

47. Respond to paragraph 47 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

48. Defendant denies the allegations of paragraph 48.

49. Respond to paragraph 49 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

50. Defendant denies the allegations of paragraph 50.

51. Defendant denies the allegations of paragraph 51.

52. Respond to paragraph 52 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

53. Defendant denies the allegations of paragraph 53.

54. Respond to paragraph 54 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

55. Defendant denies the allegations of paragraph 55.

56. Respond to paragraph 56 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

57. Defendant denies the allegations of paragraph 57.

58. Defendant denies the allegations of paragraph 58.

59. Defendant denies the allegations of paragraph 59.

60. Defendant denies the allegations of paragraph 60.

61. Respond to paragraph 61 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

62. Defendant denies the allegations of paragraph 62.

63. Defendant denies the allegations of paragraph 63.

64. Defendant denies the allegations of paragraph 64.

65. Defendant denies the allegations of paragraph 65.

66. Defendant denies the allegations of paragraph 66.

67. Respond to paragraph 67 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

68. Defendant denies the allegations of paragraph 68.

69. Defendant denies the allegations of paragraph 69.

70. Respond to paragraph 70 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

71. Defendant denies the allegations of paragraph 71.

72. Respond to paragraph 72 of the Complaint by repeating, reiterating, and realleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

73. Defendant denies the allegations of paragraph 73.

74. Defendant denies the allegations of paragraph 74.

75. Defendant denies the allegations of paragraph 75.

76. Defendant denies the allegations of paragraph 76.

WHEREFORE PARAGRAPH. Defendant denies that plaintiff is entitled to any of the relief demanded in the Wherefore clause of the Complaint or to any other relief.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

The Complaint is barred, in whole or in part, by the applicable Statute of Limitations and/or administrative filing periods and/or by the failure to satisfy the statutory and administrative

prerequisites to the bringing of a legal action. Plaintiff's claims under Title VII of the Civil Rights Act of 1964 are barred by the applicable Statute of Limitations to the extent they are based on conduct alleged to have occurred more than 300 days prior to the filing of the Charge of Discrimination with the EEOC.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

The Complaint is barred because, to the extent Plaintiff complained of discrimination to this Answering Defendant, this Defendant promptly investigated Plaintiff's complaints and took appropriate action based on such investigations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

The Complaint of the Plaintiff fails to properly state, specify or allege a cause of action or claim on which relief can be granted as a matter of law.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

That if it is determined that Defendant is responsible for the acts alleged in the Complaint then Plaintiff failed to take reasonable steps to mitigate his damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

The Complaint fails to state a claim upon which an award of compensatory and/or punitive damages can be granted. There was no employer-employee relationship between plaintiff and this answering defendant. And this answering defendant did not direct, control or supervise any aspect of plaintiff's employment.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Plaintiff is not entitled to recover punitive damages on his claims of discrimination because, at all relevant times, Defendant has engaged in good faith efforts to comply with all laws prohibiting discrimination in employment.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel and unclean hands.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

All or part of plaintiff's claims for damages are barred or limited by the doctrine of after-acquired evidence.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Defendant neither knew of nor condoned or ratified the alleged misconduct, and therefore is not legally responsible for it. Defendant is not liable for an act committed by a separate corporation or an employee not within the scope of employment.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE  
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory conduct. And that the Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by his employer or to avoid harm otherwise.

**AS AND FOR AN ELVENTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

That plaintiff's claims for disparate impact are not viable because there is no allegation of a disparate impact resulting from a facially neutral policy or practice

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Any challenged practice by this answering defendant is job related for the position in question and consistent with business necessity

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

Because no discovery has been taken at this stage of the case, defendant reserves the right to file and serve additional defenses.

**WHEREFORE**, the Defendant demands judgment dismissing the Complaint with prejudice, together with its attorneys' fees, costs and disbursements in this action. Defendant hereby objects to a trial by jury of all issues and matters including, but not limited to, those issues and matters on lost wages, back pay, front pay and other equitable relief.

DATED: August 15, 2008  
New York, New York

Yours, etc.

HOEY, KING, TOKER & EPSTEIN  
Attorneys for **Defendants**  
**DOUGLAS ELLIMAN PROPERTY**  
**MANAGEMENT, JOHN COLEMAN, SG2**  
**MANAGEMENT, LLC, SOUNDVIEW**  
**MANAGEMENT, LLC, AND AAF**  
**SOUNDVIEW MANAGEMENT**  
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55 Water Street, 29th Floor  
New York, New York 10041-2899  
(212) 612-4200

By: /s

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Glen H. Parker

To:

Michael Schwartz, Esq.  
Attorneys for Plaintiff, Luigi Selca  
122 East 42nd Street, 1616  
New York, New York 10168

WARREN HARR